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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,063	11/27/2001	Kenneth W. Michaels	J-3153A	9539

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EXAMINER

NICOLAS, FREDERICK C

ART UNIT	PAPER NUMBER
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3754

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DATE MAILED: 04/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/995,063

Applicant(s)

MICHAELS ET AL.

Examiner

Frederick C. Nicolas

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-78 is/are pending in the application.
- 4a) Of the above claim(s) 7,9-13,20,22-26,36 and 38-78 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8,14-19,21,27,34,35 and 37 is/are rejected.
- 7) ☒ Claim(s) 28-33 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5,7-8,10. 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I, claims 1-46 and 71-78, Species D: Figures 1-26 and 25A, Subspecies D4 of Fig. 30; claims 1-6,8,14-19,21,27-35 and 37 in Paper No. 9 is acknowledged.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-6,8 are rejected under 35 U.S.C. 102(b) as being anticipated by Tomasek et al. 2,615,597.

Tomasek et al. discloses a container for product as seen in Figure 1, which comprises a container body 10 defining a space for storage of the product (col. 1, l. 55 onto col. 2, ll. 1-5), a valve 26 in fluid communication with the space, a hollow stem 30 in fluid communication with the valve and has an exterior end that has at least one side opening 32 therethrough, wherein the valve is actuatable to dispense product through the side opening (col. 2, ll. 28-33 and in (col. 3, ll. 40-59), the exterior end includes a profiled end surface that defines the at least one side opening (see Figure 2 for location of the profiled end surface), the profiled end surface forms a slot as seen in Figure 2, the slot defines first and second side openings (col. 2, ll. 30-33), each of the first and

second side openings is defined by a base surface and a pair of side surfaces as seen in Figure 2.

4. Claims 14-19,21 are rejected under 35 U.S.C. 102(b) as being anticipated by D. Young 1,445,029.

D. Young discloses a container for use with dispensing apparatus 20 that dispenses pressurized product stored in the container (col. 1, ll. 12-25), which comprises a container body defining a space for storage of the product (note: it is inherent that the device of D. Young has a container body defining a space for storage of the product in as much as the applicant's claimed invention), a valve 10 in fluid communication with the space, a hollow stem 11 in fluid communication with the valve and has an exterior end that has at least one side opening 15 therethrough, wherein the stem is adapted for engagement with the apparatus to permit dispensing of product through the at least one side opening into the dispensing apparatus (col. 2, ll. 47-65), the exterior end includes a profiled end surface that defines the at least one side opening (see Figure 4 for location of the profiled end surface), the profiled end surface forms a slot as seen in Figure 4, the slot defines first and second side openings (col. 2, ll. 69-72), each of the first and second side openings is defined by a base surface and a pair of side surfaces as seen in Figure 4, note: the base portion is the bottom part of each slot and the vertical walls of the slot are the pair of side surfaces.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 27,34-35 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over D. Young 1,445,029 in view of Lawrence 3,549,055.

Lawrence discloses a combination as seen in Figure 1, which comprises a dispensing apparatus adapted to dispense product and has a coupling assembly (10a, 10b), a dispenser inlet valve (col. 2, ll.59-60, and as seen in Figure 1), a container 1 of pressurized product disposed in the dispenser and engaged by the coupling assembly as seen in Figure 3, the container includes a container body defining a space for storage of the product (col. 2, ll. 53-56), a container valve in fluid communication with the space and a hollow stem 3 in fluid communication with the valve (col. 2, ll. 53-58). Lawrence lacks the hollow stem has an exterior end that has at least one side opening. D. Young teaches the use of a hollow stem 11 with an exterior end that has at least one side opening/slot 15 therethrough, the slot defines first and second side openings (col. 2, ll. 69-72).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute Lawrence's hollow stem with the hollow stem of D. Young as such, in order to provide a stem that constitutes a flow rate metering or control restriction in a location where the user can easily clean or clear it, as taught by D. Young (col. 1, ll. 50-52).

Allowable Subject Matter

7. Claims 28-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. The following is a statement of reasons for the indication of allowable subject matter: the prior art fails to disclose or render obvious in combination with the other claimed limitations of claims 27-28:

“wherein the hollow stem includes a profiled end surface and a main body portion and wherein the coupling assembly includes a first sealing element engageable with the main body portion and a second sealing element engageable with the end surface”.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Macquire-Cooper 3,743,189, Lapin et al. 2,729,368, Houser 5,676,184, Knight 4,239,407, Jean Ramis 3,591,128, Brunet 4,572,410, Pyenson 2,660,132, Steinman 3,495,922, Soffer 2,704,622 and Michaels et al. 6,415,957 disclose other types of container for product.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (703)-305-6385. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mancene L. Gene, can be reached on (703) 308-2696. The fax phone

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number for the organization where this application or proceeding is assigned is (703)-872-9302 and for after final communication is (703)-872-9303.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-0861.

FN
April 22, 2003

(F.N.) 4/22/03

Gene Mancane
Gene Mancane
Supervisory Patent Examiner
Group 3700